

§2.113

40 CFR Ch. I (7–1–01 Edition)

(3) There is a need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of EPA.

(f) Failure of EPA to issue a determination within the 10-day period or any authorized extension shall constitute final agency action which authorizes the requestor to commence an action in an appropriate Federal district court to obtain the records.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985]

§2.113 Initial denials of requests.

(a) An initial denial of a request may be issued only for the following reasons:

(1) A statutory provision, provision of this part, or court order requires that the information not be disclosed;

(2) The record is exempt from mandatory disclosure under 5 U.S.C. 552(b) and EPA has decided that the public interest would not be served by disclosure; or

(3) Section 2.204(d)(1) requires initial denial because a third person must be consulted in connection with a business confidentiality claim.

(b) The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices are delegated the authority to issue initial determinations. This authority may be redelegated; *Provided*, That the authority to issue initial denials of requests for existing, located records (other than denials based solely on §2.204(d)(1)) may be redelegated only to persons occupying positions not lower than division director or equivalent.

(c) [Reserved]

(d)(1) Each initial determination to deny a request shall be written, signed, and dated, and, except as provided in paragraph (d)(2), shall contain a reference to the Request Identification Number, shall identify the records that are being withheld (individually, or, if the denial covers a large number of similar records, by described category), and shall state the basis for denial for

each record or category of records being withheld.

(2) No initial determination shall reveal the existence or nonexistence of records if identifying the mere fact of the existence or nonexistence of those records would reveal confidential business information, confidential personal information or classified national security information. Instead of identifying the existence or nonexistence of the records, the initial determination shall state that the request is denied because either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of 5 U.S.C. 552(b). No such determination shall be made without the concurrence of the General Counsel or his designee. The General Counsel has designated the Contracts and Information Law Branch to act on these requests for concurrence. See §2.121 for guidance on initial determinations denying, in limited circumstances, the existence of certain law enforcement records or information.

(e) If the decision to deny a request is made by an authorized EPA employee other than the person signing the determination letter, that other person's identity and position shall be stated in the determination letter.

(f) Each initial determination which denies, in whole or in part, a request for one or more existing, located EPA records (including determinations described in §2.113(d)(2) of this section) shall state that the requester may appeal the initial denial by sending a written appeal to the address shown in §2.106(a) within 30 days after receipt of the determination. An initial determination which only denies the existence of records, however, will not include a notice of appeal rights.

(g) A determination shall be deemed issued on the date the determination letter is placed in EPA mailing channels for first class mailing to the requestor, delivered to the U.S. Postal Service for mailing, or personally delivered to the requestor, whichever date first occurs.

[41 FR 36902, Sept. 1, 1976, as amended at 50 FR 51659, Dec. 18, 1985; 53 FR 216, Jan. 5, 1988]